

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF EAST KENTUCKY	)	
POWER COOPERATIVE, INC. FOR	)	
APPROVAL OF AN AMENDMENT TO ITS	)	CASE NO. 2008-00115
ENVIRONMENTAL COMPLIANCE PLAN	)	
AND ENVIRONMENTAL SURCHARGE	)	

O R D E R

On March 28, 2008, East Kentucky Power Cooperative, Inc. ("East Kentucky") filed its application to amend its Environmental Compliance Plan and its Environmental Surcharge approved in Case No. 2004-00321.<sup>1</sup> East Kentucky proposes to amend its existing Environmental Compliance Plan by adding six new projects that will be replacements or upgrades to its existing environmental facilities. Some of these projects have been agreed to by East Kentucky in conjunction with a federal Consent Decree which East Kentucky entered into in September 2007 to resolve a lawsuit filed by the Environmental Protection Agency. The projects not specifically required by the Consent Decree are still being requested because of other regulatory requirements or because the project includes pollution control equipment.<sup>2</sup> The projects are:

1. Low NOx burners at Dale Station;
2. Low NOx burners at Spurlock Unit 1;
3. Scrubber at Spurlock Unit 2;

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<sup>1</sup> Case No. 2004-00321, Application of East Kentucky Power Cooperative, Inc. for Approval of an Environmental Compliance Plan and Authority to Implement an Environmental Surcharge (Ky. PSC Mar. 17, 2005).

<sup>2</sup> East Kentucky's response to Commission Staff's First Data Request dated May 1, 2008, Item 1, and video transcript at 9:29:05 to 9:31:00 a.m.

4. Scrubber at Spurlock Unit 1;
5. Pollution control facilities at the new Spurlock 4 generating unit; and
6. Continuous Emission Monitoring Equipment for Particulate Matter at the Spurlock units and Mercury Monitoring Equipment at the Dale units, Spurlock units and Cooper units.

The proposed upgrades will help East Kentucky meet year-round NOx reduction requirements as required in the Consent Decree.

Kentucky Industrial Utility Customers, Inc. ("KIUC") was the only intervenor in this case. The Commission issued a procedural schedule on April 24, 2008 that provided for discovery, the filing of prepared testimony, and a public hearing. East Kentucky and KIUC filed prepared direct testimony and responded to requests for information. On July 23, 2008 and July 30, 2008, East Kentucky, KIUC, and Commission Staff participated in settlement conferences. On August 8, 2008, East Kentucky and KIUC filed a Joint Motion for Approval of Settlement Agreement and supplemental testimony from East Kentucky in support of the settlement. On August 20, 2008, the parties participated in a hearing to review the settlement agreement.

#### SETTLEMENT AGREEMENT

The settlement agreement, attached as Appendix A to this Order, reflects a unanimous resolution of all the issues in this case. The settlement agreement addresses the following issues:

1. East Kentucky's Base Environmental Surcharge Factor<sup>3</sup> will increase by \$1,012,000 to reflect the Time Interest Earned Ratio ("TIER") awarded in East Kentucky's recent rate case.<sup>4</sup>

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<sup>3</sup> The cost of the environmental projects included in rate base that is already being recovered through base rates.

<sup>4</sup> Case No. 2006-00472, General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc. (Ky. PSC Dec. 5, 2007).

2. The TIER applied to the environmental surcharge will be 1.35, the same as awarded in the rate case. East Kentucky has agreed to credit the surcharge in January 2009 by any amount of net margin, for the 12-month period ending December 31, 2008, that exceeds a 1.35 TIER return up to \$3,500,000.
3. East Kentucky will certify that it and one of its members, Owen Electric Cooperative ("Owen"), will make no proposals in this case regarding the cost allocation issue which Owen raised in East Kentucky's recent two-year environmental surcharge review case.<sup>5</sup>
4. The changes to the Environmental Compliance Plan and the surcharge will be effective for service rendered on and after November 1, 2008.
5. All other changes to the Environmental Compliance Plan and surcharge will be accepted as proposed.

Based upon a review of the settlement agreement and an examination of the record, and being otherwise sufficiently advised, the Commission finds that the provisions of the settlement are reasonable, are in the public interest, and should be approved. The Commission's approval of the provisions of the settlement is based solely on their reasonableness in toto and does not constitute precedent on any issue.

IT IS THEREFORE ORDERED that:

1. The settlement attached hereto as Appendix A is approved in its entirety for service rendered on and after November 1, 2008.
2. Within 20 days of the date of this Order, East Kentucky shall file new tariff sheets setting forth the changes approved herein for Rate ES—Environmental

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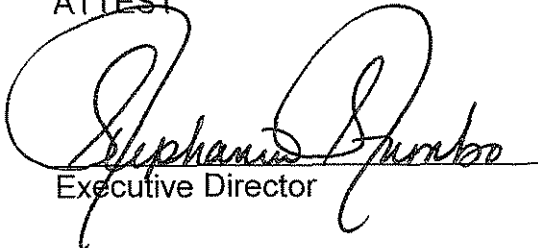
<sup>5</sup> Case No. 2007-00378, An Examination by the Public Service Commission of the Environmental Surcharge Mechanism of East Kentucky Power Cooperative, Inc. for the Six-Month Billing Periods Ending June 30, 2006 and December 31, 2006, for the Two-Year Billing Period Ending June 30, 2007, and the Pass Through Mechanism For Its Sixteen Member Distribution Cooperatives (Ky. PSC Aug. 1, 2008).

Surcharge and reflecting their effective date of November 1, 2008 and that they were authorized by this Order.

Done at Frankfort, Kentucky, this 29th day of September, 2008.

By the Commission

ATTEST:

  
Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2008-00115 DATED SEPTEMBER 29, 2008

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

AUG 08 2008

PUBLIC SERVICE  
COMMISSION

THE APPLICATION OF EAST KENTUCKY  
POWER COOPERATIVE, INC., FOR  
APPROVAL OF AN AMENDMENT TO ITS  
ENVIRONMENTAL COMPLIANCE PLAN AND  
ENVIRONMENTAL SURCHARGE

Case No. 2008-00115

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SETTLEMENT AGREEMENT

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This Settlement Agreement, is entered this 6<sup>th</sup> day of August, 2008, by and between East Kentucky Power Cooperative, Inc., (hereinafter referred to as "EKPC") and Kentucky Industrial Utility Customers, Inc. (hereinafter referred to as "KIUC").

WITNESSETH:

WHEREAS, EKPC filed an Application with the Kentucky Public Service Commission (the "Commission") on March 28, 2008, which was subsequently accepted for filing on April 28, 2008, for approval of an amendment of its Environmental Compliance Plan and Environmental Surcharge to add new environmental compliance projects, effective on May 1, 2008.

WHEREAS, The Commission, by order dated April 24, 2008, set the effective date of the proposed amendment for October 27, 2008, based on the statutory six month review period running from the April 28, 2008 acceptance date of the Application.

WHEREAS, KIUC was made a party to PSC Case No. 2008-00115 by an order of the Commission dated May 12, 2008.

WHEREAS, the Parties to the above-referenced case participated in extensive discovery, reviewed EKPC's pre-filed direct testimony and KIUC's prepared testimony from Lane Kollen, participated in settlement conferences with the Commission staff on July 23 and July 30, 2008, and engaged in additional discussions by teleconference.

WHEREAS, the Parties have discussed and resolved the issues of the amount of the increase in EKPC's Environmental Surcharge, the rate of return, the timing of such changes and all other issues in the case.

WHEREAS, The Parties desire to settle the issues in the above-referenced case based on the terms contained in this Settlement Agreement.

NOW, THEREFORE, for and in consideration of the premises and conditions set forth herein, the Parties hereby agree, as follows:

1. The Parties agree that EKPC's Base Environmental Surcharge Factor ("BESF") shall be increased by \$1,012,000, to reflect the Times Interest Earned Ratio ("TIER") return currently recovered in base rates on Construction Work In Progress ("CWIP") amounts relating to projects existing as of September 30, 2006, and added to EKPC's Environmental Compliance Plan in this case.
2. The Parties agree that EKPC's TIER for the Environmental Surcharge shall be raised to 1.35, subject to EKPC's agreement to credit the surcharge in January 2009 by any amount of EKPC net margins for the twelve months ending December 31, 2008 that exceeds a 1.35 TIER return, up to a maximum amount of \$3,500,000.
3. The Parties agree that EKPC will certify to the Commission, and EKPC member system Owen Electric Cooperative will also certify to the Commission, that they will make no proposals in this case, or in PSC Case No. 2007-00378, to change the existing methodology for the allocation of the Environmental Surcharge to customers.
4. The Parties agree that the changes to EKPC's Environmental Compliance Plan and Environmental Surcharge will be effective for service rendered on and after November 1, 2008, to facilitate EKPC's billing cycle.
5. All other changes to EKPC's Environmental Compliance Plan and Environmental Surcharge shall be made as proposed in EKPC's Application.
6. The Parties request that the Commission suspend the remainder of the Procedural Schedule established for this case, and schedule appropriate proceedings for review and approval of this Settlement Agreement.
7. The Parties agree that if the Commission materially alters this Settlement Agreement, then either Party to this Agreement may elect to withdraw its consent to this Settlement Agreement and the Settlement

Agreement will be null and void. Before withdrawing from the Settlement Agreement the Parties agree to renegotiate in good faith to try to reach a supplemental settlement.

8. This Settlement Agreement is subject to the approval of the Commission and shall not be deemed to affect the jurisdiction of the Commission or to in any way supersede Chapter 278 of the Kentucky Revised Statutes.
9. The Parties agree that this Settlement Agreement is reasonable given EKPC's status as an electric power cooperative, owned by its members, rather than an investor-owned utility, and the particular circumstances in this proceeding. Nothing in this settlement shall be considered as precedent in future cases before the Commission.
10. Upon formal adoption and acceptance by the Commission of this Settlement Agreement as a full resolution of EKPC's proposed amendment of its Environmental Compliance Plan and Environmental Surcharge, the Parties agree that no petition for rehearing, pursuant to KRS §278.400, nor any appeal, pursuant to KRS §278.410, will be filed by either Party regarding this case.

IN WITNESS WHEREOF, the duly authorized counsel for the Parties have affixed their signatures to this Settlement Agreement on the date first above written.

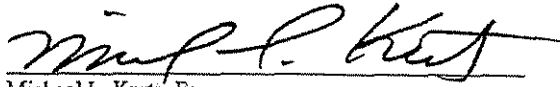




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